
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Northern Electric Cooperative)	File Number EB-02-PL-157
Bath, South Dakota)	
)	NAL/Acct. No. 200332420001
)	
)	FRN 0002-4325-40

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 18, 2003

By the Resident Agent, Saint Paul Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Northern Electric Cooperative (“Northern”), owner of an antenna structure located in Bath, South Dakota, has apparently violated Section 17.4(a) of the Commission's Rules (the “Rules”),¹ by failing to register the tower. We conclude that Northern is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On December 3 and 4, 2002, an agent from the FCC Enforcement Bureau’s Saint Paul Office inspected a painted and lighted tower located at the rear of Northern’s building on Route 12, Bath, SD. The agent determined the coordinates of the tower using a Global Positioning System (GPS) receiver. A later database search revealed no registration for the tower.

3. On January 24, 2003, the agent sent a letter of inquiry to Northern regarding the towers on their property².

4. On February 18, 2003, the engineer for Northern replied to the letter. The engineer stated that the painted and lighted tower at the rear of Northern’s building was not registered.

¹ 47 C.F.R § 17.4(a)

² Northern has three tower registrations for this facility. Two are for towers # 1041652 and # 1041643. Both of these towers are properly lighted, registered, and have the registration number posted as required. A third registration, tower # 1211916, was a duplicate registration for tower # 1041643. The coordinates for the two registrations are very close, and the tower description is the same.

III. DISCUSSION

5. Section 17.4(a) of the Rules requires tower owners to register their towers. On December 3 and 4, 2002, an agent measured the coordinates of the tower as approximately N 45 27 41, W 98 20 15. No tower registration exists at or near those coordinates that match the physical description of the tower.

6. Based on the evidence before us, we find that Northern willfully³ and repeatedly⁴ violated Section 17.4(a) of the Rules by failing to register the tower. Pursuant to Section 1.80(b)(4) of the Rules,⁵ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*")⁶, sets the base forfeiture amount for failure to file required forms or information at \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (the "Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying *Forfeiture Policy Statement* and the factors listed above, we believe that a three thousand dollar (\$3,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Northern Electric Cooperative is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful violation of Section 17.4(a) of the Rules, by failing to register the tower.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Northern Electric Cooperative SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch,

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, and 0.311.

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Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332420001 and FRN 0002-4325-40.

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. 200332420001.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Northern Electric Cooperative, West Highway 12, Bath, SD 57427.

FEDERAL COMMUNICATIONS COMMISSION

F. M. Evans, P. E.
Resident Agent
Saint Paul Office

Attachment A: Condensed List of Small Entities

¹⁰ See 47 C.F.R. § 1.1914.